

1243 BATTERY TO A NURSE — § 940.20(2r)

INSTRUCTION WITHDRAWN FOR OFFENSES OCCURRING AFTER MARCH 24, 2022, BECAUSE THE STATUTE TO WHICH IT PERTAINED WAS REPEALED BY 2021 WISCONSIN ACT 209. FOR OFFENSES OCCURRING AFTER MARCH 24, 2022, SEE WIS JI-CRIMINAL 1247A AND 1247B.

Statutory Definition of the Crime

Section 940.20(2r) of the Criminal Code of Wisconsin is violated by one who intentionally causes bodily harm to (a nurse) (an individual acting under the supervision of a nurse) where at the time of the act the defendant knows or has reason to know that the victim is (a nurse) (an individual acting under the supervision of a nurse) acting in a professional capacity and there is no consent by the victim harmed.

State's Burden of Proof

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following six elements were present.

Elements of the Crime That the State Must Prove

1. The defendant caused bodily harm to (name of victim).

“Cause” means that the defendant’s conduct was a substantial factor in producing the bodily harm.¹

“Bodily harm” means physical pain or injury, illness, or any impairment of physical condition.²

2. (Name of victim) was (a nurse)³ (an individual acting under the supervision of a nurse).
3. (Name of victim) was acting in (his) (her) professional capacity.⁴
4. The defendant knew, or had reason to know, that (name of victim) was (a nurse acting in a professional capacity) (an individual acting under the supervision of a nurse acting in a professional capacity).⁵
5. The defendant caused bodily harm without the consent of (Name of victim).
6. The defendant acted intentionally.

This requires that the defendant intended to cause bodily harm to (name of victim) and knew that (name of victim) did not consent to the causing of bodily harm.⁶

Meaning of “Intentionally”

Intent to cause bodily harm means that the defendant had the mental purpose to cause bodily harm to another human being or was aware that (his) (her) conduct was practically certain to cause bodily harm to another.⁷

Deciding About Intent and Knowledge

You cannot look into a person’s mind to find intent or knowledge. Intent and knowledge must be found, if found at all, from the defendant’s acts, words, and statements, if any, and from all the facts and circumstances in this case bearing upon intent and knowledge.

Jury's Decision

If you are satisfied beyond a reasonable doubt that all six elements of this offense have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

COMMENT

Wis JI-Criminal 1243 was approved by the Committee in August 2020. Its withdrawal for offenses occurring after the effective date of 2021 Wisconsin Act 209 was approved by the Committee in April 2022.

Section 940.20(2r) was created by 2019 Wisconsin Act 97 [effective date: February 7, 2020].

1. The Committee concluded that the simple “substantial factor” definition of cause should be sufficient for most cases. Where there is evidence of more than one possible cause, something like the following might be added:

There may be more than one cause of bodily harm. The act of one person alone might produce it, or the acts of two or more persons might jointly produce it.

Also see Wis JI-Criminal 901 Cause.

2. This is the definition of “bodily harm” provided in § 939.22(4).

3. § 940.20(2r)(a) provides that “nurse” means an individual who is licensed (as a registered nurse) pursuant to § 441.06 or (as a practical nurse) pursuant to 441.10.

4. If further instruction on “professional capacity” is necessary, see secs. 441.001(3) and (4), which define practical and professional nursing.

5. The “knew or had reason to know” requirement is taken directly from § 940.20(2r). It is treated as a separate element rather than being combined with the sixth element where knowledge of lack of consent is addressed. This is because the “reason to know” standard differs from the actual knowledge that is required when the word “intentionally” is used in a criminal statute. See § 939.23(3).

The instruction applies the “reason to know” standard to the victim’s status as a nurse or an individual acting under the supervision of a nurse and to “acting in official capacity.”

6. Knowledge that the victim was acting in a professional capacity and that the victim did not consent is required because the word “intentionally” is used in the statute. That requires not only intent to cause bodily harm but also “knowledge of those facts necessary to make his or her conduct criminal and which are set forth after the word ‘intentionally’.” § 939.23(3).

7. See § 939.23(4) and Wis JI-Criminal 923A and 923B.